

ROYAL COURT
(Samedi Division)

14th July, 1993

91.

Before: The Bailiff, and
Jurats Blampied and Myles

Representation of Lawrence Robert Connell.

Evidence (Proceedings in other Jurisdictions) (Jersey) Order, 1983

Application by the Representor for a delay in the taking of evidence before the Viscount, arranged for 21st July, 1993, until a date on which his Western Australian Counsel will be available to attend in Jersey (i.e. the week beginning Monday, 2nd August, 1993.

The Attorney General, representing the Director of Public Prosecutions of Western Australia, convened.

Advocate R.J. Michel for the Representor.
W.J. Bailhache, Esq., Crown Advocate, on behalf of
the Attorney General, representing the Director
of Public Prosecutions of Western Australia.

JUDGMENT

THE BAILIFF: Mr. Lawrence Robert Connell is due to be tried in Australia for certain offences which do not concern us, on 23rd August, 1993. Part of the evidence required by the prosecution was to be heard in Jersey on 21st July, this year, and Mr. Connell's advocate, Mr. Michel, has applied to us for a

postponement of that hearing until the week beginning 2nd August, 1993.

The Australian prosecuting authorities applied to the appropriate Court in Australia, and obtained on 18th May, 1993, in the District Court of Western Australia, Letters of Request for an Order of this Court for the examination of certain witnesses before the Viscount.

It was not until 21st June, 1993, that an application was made to me for that Order which was made. That Order - which was lifted almost *verbatim* from the application to the District Court - named not only the Director of Public Prosecutions but prosecuting and defence counsel, not only in Australia, but any who might be briefed here. The important point is that the Australian Judge thought it right that Australian counsel should be heard, both for the prosecution and for the defence.

It is clear that if the Attorney General's Department had acted more expeditiously, the application to me in Chambers could have been made quite some time before 21st June, 1993, and that month was therefore lost for a possible hearing before the Viscount.

It is not necessary for us to go into the exchange of correspondence in great detail. It is quite true that on 11th and 26th May, 1993, the solicitors for Mr. Connell were asked by the Director of Public Prosecutions in Australia for dates on which counsel would not be available, and there was some delay in that matter, but on the other hand by 1st July, 1993, it was quite clear, for perfectly proper reasons, that neither Mr. Archer, who was representing Mr. Connell in Australia, nor Mr. Michel who had been instructed here by Mr. Connell's solicitors, could appear. So far as Mr. Archer is concerned, it was hoped that he would have

been available during the week of 19th July, 1993, but on 25th June, 1993, as a result of another case in which he was appearing in the Supreme Court of New South Wales, it appeared that he would not be available for that week and even possibly for the following week.

Therefore the position was that on 1st July, 1993, it was difficult to see how a hearing before the Viscount could be fixed for 21st July, without not just inconveniencing counsel, but without depriving Mr. Connell both of his Australian counsel and of the services of Mr. Michel.

So far as Mr. Michel is concerned, his inability to appear stemmed from the fact that he had booked a holiday and we concur with Mr. Bailhache that if that were really the only test, then of course counsel's convenience would have to come secondary to the administration of justice and the requirements of the Courts. But that is not the only criteria. If we were to maintain the date, the effect would be to deprive Mr. Connell of the assistance both of Mr. Michel and Mr. Archer. It might be possible to have one without the other, but certainly not both, which in our view would cause a grave injustice to Mr. Connell which could not be put right by a later application for a delay for his trial to the Australian authorities.

Therefore we consider that it is right and proper that we should intervene in this matter and we therefore allow the application and postpone the hearing until the week beginning 2nd August, 1993.

Authorities

First Report of the Commissioners appointed to inquire into the
State of the Criminal Law in the Channel Islands: Jersey
(1847): p.xxxiv of the Report
p.110 of the Appendix of Evidence: Questions 164-176.

R. -v- Kirk (1983) 76 Cr.App.R. 194.

R. -v- Kingston (1948) 32 Cr.App.R. 183 at p.188.

R. -v- Harris (1985) C.L.R. 244.